

Senate Bill No. 130

Passed the Senate April 4, 2005

Secretary of the Senate

Passed the Assembly June 13, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 3262 of the Civil Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

SB 130, Margett. Works of improvement: stop notices.

Under existing law relating to works of improvement, neither the owner nor the original contractor may waive, affect, or impair the claims and liens of other persons except by their written consent, and any term of the contract to that effect is null and void. However, a waiver and release is binding and effective to release the owner, construction lender, and surety on a payment bond from claims and liens if it follows substantially one of the forms provided by existing law, and if it is signed by the claimant, and in the case of a conditional release, if there is evidence of payment to the claimant. Existing law further provides that no oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless it is pursuant to a waiver and release form provided by existing law, or the claimant had actually received payment in full for the claim.

This bill would provide that nothing in the above provisions precludes a stop notice claimant from reducing the amount of, or releasing in its entirety, a stop notice that has been served upon an owner. The bill would also specify that the reduction or release of a stop notice shall be in writing and may be served in a form other than those forms set forth in that provision of law. The bill would provide that the reduction or release of a stop notice shall not preclude the service of a subsequent stop notice that is timely and proper, shall release the owner of an obligation to withhold money on account of the stop notice, shall release the claimant's right to enforce the notice, and shall not release any right that the claimant may have other than the right to enforce the stop notice, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 3262 of the Civil Code is amended to read:

3262. (a) Neither the owner nor original contractor by any term of their contract, or otherwise, shall waive, affect, or impair the claims and liens of other persons whether with or without notice except by their written consent, and any term of the contract to that effect shall be null and void. Any written consent given by any claimant pursuant to this subdivision shall be null, void, and unenforceable unless and until the claimant executes and delivers a waiver and release. That waiver and release shall be binding and effective to release the owner, construction lender, and surety on a payment bond from claims and liens only if the waiver and release follows substantially one of the forms set forth in this section and is signed by the claimant or his or her authorized agent, and, in the case of a conditional release, there is evidence of payment to the claimant. Evidence of payment may be by the claimant's endorsement on a single or joint payee check which has been paid by the bank upon which it was drawn or by written acknowledgment of payment given by the claimant.

(b) No oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless (1) it is pursuant to a waiver and release prescribed herein, or (2) the claimant had actually received payment in full for the claim. Nothing in this section precludes a stop notice claimant from reducing the amount of, or releasing in its entirety, a stop notice that has been served upon an owner. The reduction or release of a stop notice, which shall be in writing, may be served in a form other than the forms of release set forth in this section. Any reduction or release of a stop notice: (1) shall not preclude the service of a subsequent stop notice that is timely and proper; (2) shall release the owner from any obligation to withhold money on account of the stop notice, to the extent of the reduction or release; (3) shall be effective to release the claimant's right to enforce the stop notice, to the extent of the reduction or release; and (4) shall not operate as a release of any right that the claimant may have, other than the claimant's right to enforce the stop notice, to the extent of the reduction or release.

(c) This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court provided the accord and satisfaction or agreement and settlement make specific reference to the mechanic's lien, stop notice, or bond claims.

(d) The waiver and release given by any claimant hereunder shall be null, void, and unenforceable unless it follows substantially the following forms in the following circumstances:

(1) If the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS

PAYMENT

Upon receipt by the undersigned of a check from

_____ in the sum of \$ _____

(Maker of Check)

(Amount of Check)

payable to _____

(Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of

_____ located at _____

(Owner)

(Job Description)

to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to

_____ through _____

(Your Customer)

(Date)

only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Dated: _____

(Company Name)

By _____

(Title)

(2) If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress

payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall follow substantially the following form:

UNCONDITIONAL WAIVER AND RELEASE UPON
PROGRESS PAYMENT

The undersigned has been paid and has received a progress payment in the sum of \$_____ for labor, services, equipment, or material furnished to

_____ on the job of _____

(Your Customer)

(Owner)

located at _____ and does

(Job Description)

hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to

_____ through _____
(Your Customer) (Date)

only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated: _____
(Company Name)

By _____
(Title)

Each unconditional waiver in this provision shall contain the following language, in at least as large a type as the largest type otherwise on the document:

“NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.”

(3) If the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

CONDITIONAL WAIVER AND RELEASE UPON FINAL
PAYMENT

Upon receipt by the undersigned of a check from _____ in the
the sum of \$ _____ payable to _____ and when the check has been properly
endorsed and has been paid by the bank upon which it is drawn, this
document shall become effective to release any mechanic's lien, stop notice,
or bond right the undersigned has on the job of
_____ located at _____

(Owner)

(Job Description)

This release covers the final payment to the undersigned for all labor,
services, equipment, or material furnished on the job, except for disputed
claims for additional work in the amount of \$ _____. Before any recipient of
this document relies on it, the party should verify evidence of payment to the
undersigned.

Dated: _____

(Company Name)

By _____

(Title)

(4) If the claimant is required to execute a waiver and release
in exchange for, or in order to induce payment of, a final
payment and the claimant asserts in the waiver it has, in fact,
been paid the final payment, the waiver and release shall follow
substantially the following form:

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL
PAYMENT

The undersigned has been paid in full for all labor, services, equipment or material furnished to

_____ on the job of _____
(Your Customer) (Owner)

located at _____ and does
(Job Description)

hereby waive and release any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of \$ _____.

Dated: _____
(Company Name)

By _____
(Title)

Each unconditional waiver in this provision shall contain the following language, in at least as large a type as the largest type otherwise on the document:

“NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.”

Approved _____, 2005

Governor